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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 681

THE SHIP CONSTRUCTION & TRADING CO., INC.,
Petitioner,

vs.

THE UNITED STATES.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

REPLY BRIEF FOR PETITIONER.

ASBURY HAYNE DEYAMPERT,
HERBERT M. BINGHAM,
Counsel for Petitioner.

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Respondent's argument (p. 8) that "petitioner has not shown that he (it) acted in reliance, and to his (its) detriment, on Commissioner Plummer's communications" to petitioner of acceptance by the Board of petitioner's bid as amended, ignores the unquestioned contrary fact. The reliance was detrimental in excess of $10,000, and otherwise (R. 85).

The argument (pp. 8-9) that petitioner's actual forbearance to sue, pending further negotiations for an agreement as to the form of the formal contract required

by the amended bid, was not requested by the Board nor the result of a bi-lateral agreement, and was therefore no consideration for the option giving petitioner until "September 29th at noon" to accept the formal contract offered and demanded by the Board, is likewise blind to unquestioned facts conclusively showing the contrary. Petitioner had already threatened suit (R. 84). The parties conferred. The Board recorded the result in its letters to petitioner:

> "You claim to have certain rights * * * and the * * * Board denies that you have such rights. Nevertheless, it is agreed that the *status quo* shall be maintained without prejudice to the rights of either side, pending an effort to arrive at a satisfactory contract and that the resolution", giving petitioner until Aug. 23rd to execute the form of formal contract demanded by the Board (R. 52), shall be extended until "September 29th at noon" (R. 54-55).

The facts satisfy the tests of forbearance as consideration in all of the authorities.

Negotiations before Aug. 9, 1921 were for a contract. Negotiations after that date were for an agreement upon the form of a formal contract required by the amended bid which petitioner had been officially informed the Board accepted August 9, 1921.

Since *Williams* v. *Craig* 1 Dallas (1 U. S.) 313, 315-316, this Court has disallowed interest on unliquidated demands not capable of liquidation by computation, such as the instant counterclaim. *Miller* v. *Robertson,* 266 U. S. 243, 258, relied upon by respondent (p. 11), is in fact and according to the digests of Federal decisions an authority for petitioner. *Stephens* v. *Phoenix Bridge Co.,* 139 Fed. 248, (C. C. A. 2nd) is very similar to the instant case; see also: *Mowry* v. *Whitney,* 81 U. S. 620; *Goelet* v. *Ward,* 242 Fed. 65 (C. C. A. 2nd); *Zurich General Accident Co.*

v. *Mid-Continent Petroleum Co.*, 43 Pac. (2nd) 355; and *In re Paramount-Publix Corp.*, 85 F. (2d) 42.

Respondent's other arguments are adequately refuted in petitioner's main brief.

Respectfully submitted,

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HERBERT M. BINGHAM,
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